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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,364	03/27/2007	Brian Parry Slade	056222-5099	3877

9629 7590 10/14/2011
MORGAN LEWIS & BOCKIUS LLP (WA)
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WASHINGTON, DC 20004

EXAMINER

GANEY, STEVEN J

ART UNIT	PAPER NUMBER
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3752

MAIL DATE	DELIVERY MODE
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10/14/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/582,364	SLADE, BRIAN PARRY	
	Examiner	Art Unit	
	STEVEN J. GANEY	3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 July 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 1-8 and 13-17 is/are pending in the application.
- 5a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☒ Claim(s) 1-8 and 13-17 is/are rejected.
- 8) ☐ Claim(s) ____ is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

1. Receipt is acknowledged of the amendment filed on July 18, 2011, which has been fully considered in this action.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-8 and 13-17 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, line 1, the word "means" is preceded by the word "dispensing" in an attempt to use a "means" clause to recite a claim element as a means for performing the specified function of "for delivering". Therefore, it is unclear if the preamble is reciting a "means-plus-function" limitation or whether the preamble is merely stating an intended use. It is recommended that language such as --Dispensing device for delivering-- is used. Also, any instance of the phrase "dispensing means" throughout claim 1 and in the remaining dependent claims 2-8 and 13-16 should be changed to --dispensing device--.

Regarding claim 1, line 2, the word "means" is preceded by the word "valve" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth

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paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967). It is recommended that the term --valve-- is used for every instance of the phrase "valve means" throughout claim 1 and in the remaining dependent claims 2-8 and 13-16.

Regarding claim 1, line 15, the word "means" is preceded by the word "capillary" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967). It is recommended that any instance of the phrase "capillary means" throughout claim 1 and in the remaining dependent claims 2-8 and 13-16 should be changed to --capillary device--.

Regarding claim 17, line 1, the word "means" is preceded by the word "valve" in an attempt to use a "means" clause to recite a claim element as a means for performing the specified function of "for controlling". Therefore, it is unclear if the preamble is reciting a "means-plus-function" limitation or whether the preamble is merely stating an intended use. It is recommended that language such as --Valve for controlling-- is used in line 1. Also, any instance of the phrase "valve means" used throughout the remainder of claim 17 should be changed to --valve--.

Allowable Subject Matter

4. Claims 1-8 and 13-17 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Response to Arguments

5. Applicant's arguments with respect to claims 1-8 and 13-17 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEVEN J. GANEY whose telephone number is (571)272-4899. The examiner can normally be reached on 9:00-5:00; Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Len Tran can be reached on 571-272-1184. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/STEVEN J. GANEY/
Primary Examiner
Art Unit 3752

sjg